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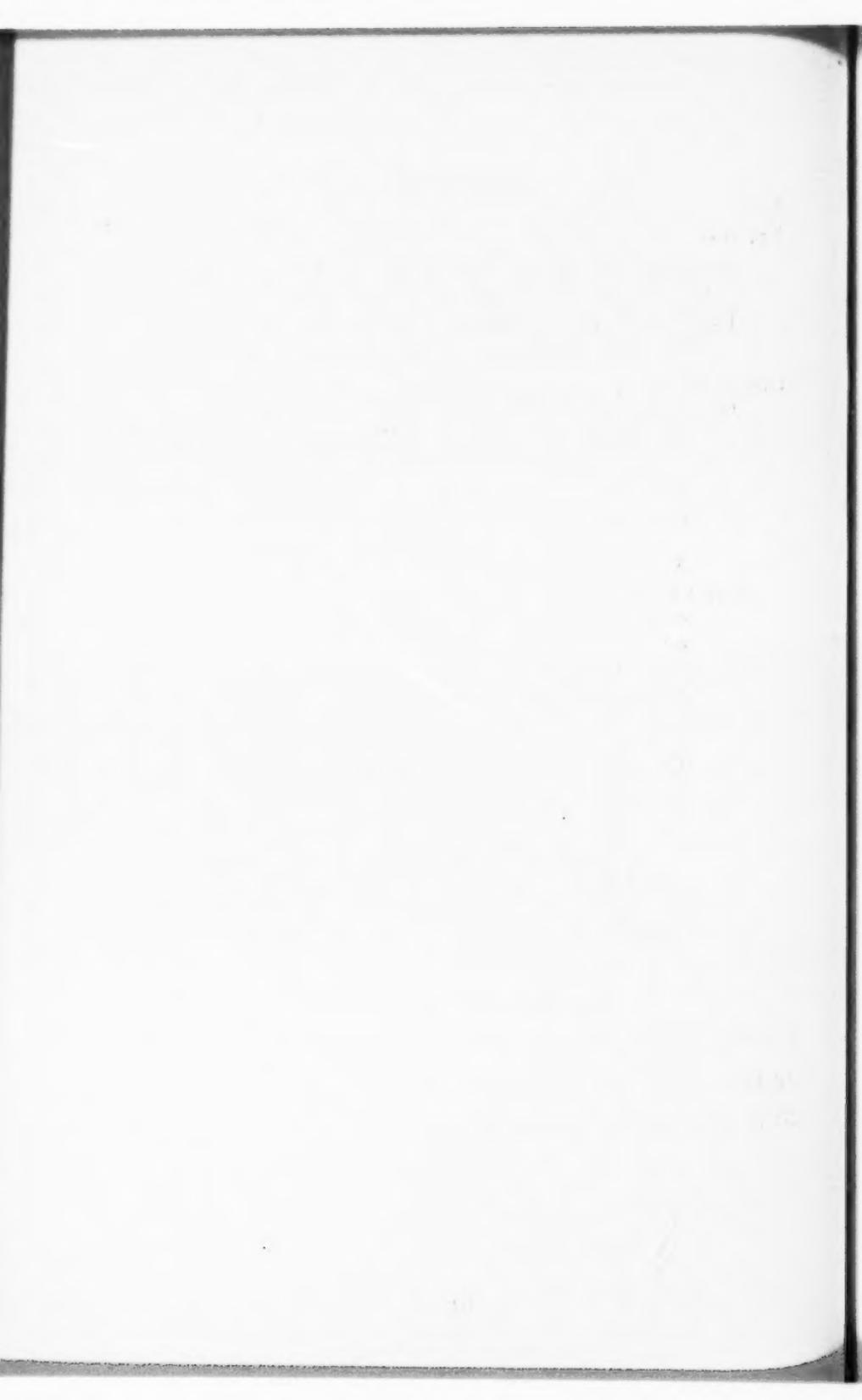
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IN THE  
**Supreme Court of the United States**

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**OCTOBER TERM, 1942**

**No. 714**

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PEOPLE OF PUERTO RICO,  
*Petitioner,*

vs.

UNITED STATES OF AMERICA,  
GONZALEZ HERMANOS, and  
MARTINEZ & Co., S. EN C.,  
*Respondents.*

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**No. 715**

PEOPLE OF PUERTO RICO,  
*Petitioner,*

vs.

UNITED STATES OF AMERICA,  
ARTURO BRAVO Y NIEVES and  
CRISTINA ACEVEDO BARRETO, HIS WIFE,  
*Respondents.*

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PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT  
OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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*To the Honorable, the Chief Justice, and the Associate  
Justices of the Supreme Court of the United States:*

Petitioner, The People of Puerto Rico, prays writs of certiorari to review the judgments in the above-entitled companion cases of the Circuit Court of Appeals for the First Circuit, November 6, 1942 [131 F. (2d) 151; Advance

Sheets], affirming orders of the District Court of the United States for Puerto Rico in each case.

### **STATEMENT**

These two cases each present the same single question on substantially identical facts. Despite their titles they present no real controversy between the federal and the insular governments. The question in each case is simply whether insular real property taxes assessed on January 15, 1941, for the fiscal year of 1941-1942 [fiscal year beginning July 1, 1941, under the insular laws] are liens to be paid out of moneys deposited by the federal government upon declarations of taking in condemnation proceedings instituted between January 15 and July 1. Both cases came up from the same court, the federal District Court for Puerto Rico; they were briefed and argued together in the Circuit Court of Appeals; and were disposed of by that court in a single opinion. Permission is, therefore, requested to present them here in this single petition for certiorari and supporting brief.

In each case a declaration of taking was filed by the federal government and a deposit of estimated compensation was made; in one [No. 714; No. 3770, C.C.A.] a judgment of condemnation was entered February 24, 1941 (R. 12); and in the other [No. 715; No. 3771, C.C.A.] May 26, 1941 (R. 6). In each, property taxes had been paid for the fiscal year ending June 30, 1941, and previous years; and in each the People of Puerto Rico filed a claim for payment, out of the deposited moneys, of the property taxes assessed on January 15, 1941, for the 1941-1942 fiscal year beginning July 1, 1941. In No. 714 [No. 3770, C.C.A.] the amount of estimated compensation was \$2,982.60, and the amount of insular taxes claimed was \$7,303.44 (R. 13, 15). In No. 715 [No. 3771, C.C.A.] the estimated amount of compensation was \$1,776.50, and the amount of taxes claimed \$19.84 (R. 7, 9).

The sole controversy lies between the individual respon-

dents, the former owners of the property in each case, and the insular government, with respect to whether or not the insular property taxes assessed on January 15 for the ensuing fiscal year had become liens on the property at the times of the institution of the respective condemnation proceedings [February 24 and May 26], and therefore payable to the insular Treasury out of the deposited amounts of estimated compensation.

The District Court,—affirmed by the Circuit Court of Appeals,—ruled that these taxes had not yet become liens, and would not until the first installment became payable under the insular statutes on July 1; and ordered the moneys paid over to the former landowners. The People of Puerto Rico believes that ruling wrong; that, under the insular statutes, the tax lien attaches immediately upon the assessment of the property taxes as of January 15; and, therefore, in these cases, attached before the institution of the condemnation proceedings begun in February and May, respectively. Hence this petition.

None of the respondents,—neither the federal government nor any of the condemnees,—~~██████████~~ filed any brief in the Circuit Court of Appeals.

### **QUESTION PRESENTED**

*As above indicated, the single question here is:*

At what date, in each year, does the insular government tax lien for real property taxes attach to the land? Is it (a) upon the making of the tax assessment, January 15; or is it (b) not until the date (July 1) when the first installment of the tax becomes actually payable in ordinary course?

The answer to that question lies in the solution of an apparent conflict between the provisions of different Puerto Rican statutes,—on the one hand of the Mortgage Law [**WHICH GRANTS THE LIEN** (Art. 168), and also provides (Art. 218) for its priority] and of the Civil Code [providing for its priority], both of which contemplate a lien to secure [in addition to the preceding three years] “*the cur-*

rent unpaid annual assessment”<sup>1</sup> or “the current annual assessment, unpaid”<sup>2</sup>, “the current unpaid annual assessments”<sup>3</sup>—and, on the other hand, of the Political Code which recognizes priority for the lien [in addition to the three prior years] only for “The tax that is *assessed for the current fiscal year*”<sup>4</sup> (*italics supplied*).

Since, under the Puerto Rican statutes, the insular government’s “fiscal year” [like that of the federal government] begins on July 1 and runs until the following June 30,<sup>5</sup> whereas the annual assessment of real property for taxation is made on January 15,<sup>6</sup> there is plainly a very marked difference, on the face of it, between the dates of the arising of a lien securing “*the current unpaid annual assessment*” [Mortgage Law, Civil Code, *supra*], and of one securing only the tax “*assessed for the current fiscal year*” [Political Code, *supra*]. The tax that is assessed on January 15 is not the tax for the then current fiscal year, which had begun on the preceding July 1; but is the tax for the succeeding fiscal year beginning on the following July 1 (nearly six months later), and is to become actually payable, not immediately upon its assessment, but, instead, one-half of it on the following July 1, nearly six months after its assessment, and the other half on the following January 1, nearly one year after its assessment. For example, in the present cases, the taxes assessed in January, 1941, were not for the then “current fiscal year”, which had begun more than six months earlier, on July 1, 1940, but were those assessed for the succeeding fiscal year of 1941-1942, to become actually payable,

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<sup>1</sup> Mortgage Law, Arts. 168, 218; *infra*, p. 27.

<sup>2</sup> Civil Code (Ed. 1930), Sec. 1823; *infra*, pp. 27-28.

<sup>3</sup> *Ibid*, Sec. 1824; *infra*, p. 28.

<sup>4</sup> Political Code, Sec. 315; *infra*, p. 29.

<sup>5</sup> *Ibid*, Sec. 314: “and said assessment book shall \* \* \* constitute the assessment of property for purposes of taxation for the fiscal year beginning on the first day of July.”

<sup>6</sup> Political Code, Sec. 298; and “No change shall be made in the assessment of any property during any fiscal year because of its transfer or other alienation”, *ib.*, Sec. 324; *infra*, pp. 28-29; 29.

one-half on July 1, 1941, and the other half not until January 1, 1942.

It follows, therefore, that, as above stated, there is, on the face of it, a very great difference between the lien provided by the Mortgage Law and the Civil Code to secure "the current unpaid annual assessment" [which manifestly arises as soon as the tax is assessed, and protects it], and the priority recognized by the Political Code only for "*The tax that is assessed for the current fiscal year*" (*italics supplied*), which, on its face, does not appear to relate to the tax when it is "assessed" at all, but only to that assessed a year earlier,—that is to say, for example, in the present cases, during the first six months of 1941, not to the taxes assessed on January 15, 1941, but only to those assessed a year earlier on January 15, 1940,—*thus leaving a gap of nearly six months*,—[if the Political Code's recognition of its priority were to be considered as the sole "grant" of the lien],—until July 1, after the taxes have been completely assessed, before they would be protected by the lien.

### **POSITION OF THE PEOPLE OF PUERTO RICO**

The People of Puerto Rico [the insular government] believes that it was not the purpose of the Legislature to leave such an unprotected gap, nor was that the true intent of the Political Code. *The Mortgage Law, creating the tax lien* immediately upon the completion of the assessment, embodies the ancient rule inherited from the Spanish law; and the Civil Code, in its latest amendment and re-enactment, repeating its own earlier phraseology, is the latest expression of the legislative will as to its priority. The earlier amendment of Section 315 of the Political Code deals only with the priority as a "first lien", of the lien already "established" by the Mortgage Law, and does not affect its existence, nor the time that it arises. The Supreme Court of Puerto Rico has held that it was the purpose of the Political Code to do "nothing more than reproduce

substantially the provisions of Articles 168 and 218 of the Mortgage Law";<sup>7</sup> the Attorney General of Puerto Rico has held that the lien arises immediately upon the completion of the assessment<sup>8</sup>; and, while the Supreme Court of Puerto Rico has never had occasion directly to decide the question, yet it has twice cited the Attorney General's opinion with approval<sup>9</sup>, and it seems quite evident that,

<sup>7</sup> *Estate of Romero v. Willoughby, Treasurer*, 10 P. R. Rep. 71, 75-76; quoted with approval, reaffirming it, in *Fajardo Sugar Co. v. Domenech, Treasurer*, 45 P. R. Rep. 539, 544; *infra*, p. 18.

<sup>8</sup> 14 Ops. Atty. Gen. of P. R. 448, 450, January 21, 1930, *arguendo*, as the basis for his conclusion that the *personal liability* of the landowner for the taxes likewise arises, and becomes fixed, immediately upon the completion of the tax assessment of January 15 in each year. [Quoted, *infra*, pp. 20-21].

<sup>9</sup> *Asociacion de Maestros de Puerto Rico v. Sancho Bonet, Treasurer*, 54 P. R. Dec. 536, 542; *Roig v. Sancho Bonet, Treasurer*, 54 P. R. Dec. 649, 650-651 [SPANISH; official English text not yet published; translations in Appendix II, *infra*, pp. 32-41]. Confer, also, *infra*, pp. 18-19. The opinion in the *Asociacion de Maestros* case contains also a statement of the "fundamental reason for the rule and policy prevalent in most of the States of the Union fixing the date for the arising of the tax lien at a point of time anterior to the date when the tax actually becomes payable",—quoting *Cooley on Taxation* and decisions in different States,—and saying (54 P. R. Dec. at pp. 541-542; Appendix II, *infra*, pp. 36-37):

"The necessity of fixing the date, prior to the physical moment of collection, from which the State may be able definitely to calculate its income for the following fiscal year, is obvious \* \* \*. The taxable status of the property should remain unaltered after a fixed point of time anterior to the date for the payment of the tax, in order that the Treasurer may have a fixed basis upon which to float his bonds, to increase or reduce the taxes, etc.

"That is, we think, the fundamental reason for the rule."

whenever it may be called upon directly to decide the question, that Court's opinion will coincide with that of the insular Attorney General,—viz, that the tax lien arises immediately upon the completion of the tax assessment as of January 15, and that any contrary implication from the language of Section 315 of the Political Code is controlled by the provisions of the Mortgage Law and of the Civil Code. No question of priority is here. The tax lien is "established" by Article 168 of the Mortgage Law.

Judge Cooper's contrary opinion in the District Court was apparently rested wholly upon the phraseology of Section 315 of the Political Code, without even noticing any difference whatever between that and the other statutes [*infra*, pp. 13-14, 22]. The Circuit Court of Appeals disposed of the provisions of the Mortgage Law and of the Civil Code briefly, without complete analysis, and manifestly erroneously, as it is believed. Errors in the opinion are analyzed in the supporting brief (*infra*, pp. 14-17).

### **REASONS FOR GRANTING THE WRITS**

The importance to the insular government of the question here presented is obvious. While the insular Supreme Court has never had occasion directly to determine the point of time at which the tax lien for insular property taxes arises; yet, now, under present war conditions, the question has become very important because of frequent federal government condemnations of land in Puerto Rico for Army, Navy, and other federal purposes. The question necessarily arises in every instance where a federal government condemnation case is instituted between January 15 and July 1 in any year; and, necessarily, in all such cases, as here, the decision has to be made by the federal District Court, without opportunity for recourse to the Supreme Court of Puerto Rico or any other local insular court; although such a question of local taxation is peculiarly one of that class of local questions, resting upon

the history and local understanding and interpretation of local statutes [and here, particularly, of statutes, some of which are derived from the ancient Spanish law,—the Mortgage Law and the Civil Code], with respect to which this Court has emphatically held that great deference should be shown to the local courts, State or Territorial, and that, wherever it can at all be avoided, the question should not be decided by a federal court in the first instance, but should be left to decision by the local courts<sup>10</sup>; and, particularly with reference to Puerto Rico, whose

“Taxing Acts of Puerto Rico are purely local, and . . . . Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a proper and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.”<sup>11</sup>

And, in relation to Puerto Rican tax matters, the general legislative policy of the Congress against interference by the federal courts with the levy or collection of insular taxes has been very strongly stated.<sup>12</sup>

*Under these circumstances*, in cases where as here in a federal condemnation suit (1) the federal District Court has been compelled to proceed and to decide an important question of interpretation of local tax laws, partly derived from ancient Spanish civil law sources; and where (2) because of present war conditions and consequent frequent re-

<sup>10</sup> *Railroad Commission of Texas vs. Pullman Co.*, 312 U. S. 496, 499-500; *Watson vs. Buck*, 313 U. S. 387, 402.

<sup>11</sup> *Sancho Bonet, Treasurer v. Yabucoa Sugar Co.*, 306 U. S. 505, 510; *Sancho Bonet, Treasurer v. Texas Co.*, 308 U. S. 463, 470-471. *Confer, Diaz vs. Gonzalez*, 261 U. S. 102, 105-106.

<sup>12</sup> “Butler Act”, Act of March 4, 1927, c. 503, Sec. 7, 44 Stat. 1418, 1421, forbidding maintenance in the federal District Court for Puerto Rico of any suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Puerto Rico.

currence of federal land condemnations in Puerto Rico, the question will often be recurring again in the federal District Court there, without any opportunity for recourse to the insular courts for decision; and where (3) as here the decision of the federal court now affirmed by the Circuit Court of Appeals is at variance with that of the insular Attorney General which has been accepted administratively as the established rule by the local authorities for years and cited with approval by the local insular Supreme Court; and where [although there has been no direct decision on the point by the insular Supreme Court] it is likewise quite manifest that (4) that Court's opinion would be in accord with that of the local Attorney General and with the local administrative practice and understanding,—with which the decision of the federal District Court is here in conflict;—and where (5) the local understanding and interpretation of their local statutes, as has been pointed out by the insular Supreme Court<sup>13</sup>, is in harmony with the general practice in the States of having the tax lien attach at some point of time anterior to the date when the tax actually becomes payable; and where, also (6) the question has never before been decided by this Court;—in such a case as this,—it is urgently submitted by the insular government,—the question should be examined and decided by this Court.

Your petitioner, The People of Puerto Rico, therefore, respectfully requests that this petition be granted.

WILLIAM CATTRON RIGBY,  
*Attorney for Petitioner.*

MANUEL RODRIGUEZ RAMOS,  
*Acting Attorney General of Puerto Rico,  
Of Counsel.*

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<sup>13</sup> *Asociacion de Maestros* case, *ante*, p. 6 and *infra*, pp. 18-20, 36-39.